

1992

# Corporate City of Roy v. Brandon Gresham : Brief of Appellee

Utah Court of Appeals

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Brandon Gresham; Pro-Se.

Christopher G. Davis; Roy City Attorney; Attorney for Appellee.

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## Recommended Citation

Brief of Appellee, *Corporate City of Roy v. Brandon Gresham*, No. 920199 (Utah Court of Appeals, 1992).  
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BRIEF

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IN THE UTAH COURT OF APPEALS

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CKET NO. 920199  
CITY OF ROY, )  
 )  
Plaintiff-Appellee, ) Case No. 920199 CA  
 )  
vs. )  
 )  
BRANDON GRESHAM, ) Category No. 2  
 )  
Defendant-Appellant. )

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BRIEF OF APPELLEE

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APPEAL FROM A CONVICTION OF OBSCURED DRIVER'S  
VIEW, AN INFRACTION, IN THE SECOND JUDICIAL  
CIRCUIT COURT, STATE OF UTAH, COUNTY OF WEBER,  
ROY DEPARTMENT, THE HONORABLE ALFRED C. VAN  
WAGENEN PRESIDING

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7 1993

IN THE UTAH COURT OF APPEALS

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	)	
Defendant-Appellant.	)	

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BRIEF OF APPELLEE

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JURISDICTION AND NATURE OF PROCEEDINGS

This appeal is from a conviction of obscured driver's view, an infraction, under Utah Code Ann. § 41-6-149 (1953).

This Court has jurisdiction to hear the appeal under Utah Code Ann. § 78-22-3 (2) (d).

STATEMENT OF ISSUES PRESENTED ON APPEAL

AND STANDARDS OF APPELLATE REVIEW

The following issues are presented by defendant for review:

1. Was the defendant's vehicle viewed by the officer on a public highway allowing the officer to stop the vehicle?
2. Was the defendant denied due process of law by the city's timeliness in filing an answer to the defendant's discovery?
3. Was the Court's denial of defendant's motion to continue the trial based upon the timeliness of the answer to defendant's discovery request an abuse of discretion?

Defendant has failed to demonstrate by reference to the

record on appeal that he presented arguments concerning these issues; therefore, his claims are not properly before the court. See State v. Carter, 707 P.2d 656, 660-661 (Utah 1985); State v. Robbins, 709 P.2d 771, 773 (Utah 1985); Mark VII Fin. Consultants Co. v. Smedley, 792 P.2d 130, 134 (Utah App. 1990). Therefore, standards of review applicable to the merits of the issue identified are not set forth here.

#### CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Any relevant text of constitutional provisions, statutes, or rules pertinent to the resolution of the issues presented on appeal is contained in the body of this brief.

#### STATEMENT OF THE CASE

Defendant, Brandon Gresham, was charged with an obscured vehicle windshield, an infraction under Utah Code Ann. § 41-6-149 (1953). The defendant filed a motion for discovery on March 10, 1992 with the Court and the City Attorney's Office. The City Attorney filed a response to the defendant's request on March 13, 1992. The Defendant filed a motion for continuance and dismissal on March 17, 1992. These motions were denied by Judge Dutson but forwarded to Judge Van Wagenen for his review, since he would be hearing the case in Roy on the scheduled trial date. On March 19, 1992, Judge Van Wagenen denied defendant's renewed motions for dismissal and continuance. A bench trial was held. The defendant was found guilty and sentenced to pay a thirty dollar fine. A notice of appeal was filed on March 26, 1992.

### STATEMENT OF FACTS

In light of the City's response to the defendant's legal arguments, a statement of facts beyond that set forth in the Statement of the Case is unnecessary.

### SUMMARY OF ARGUMENT

This Court should not consider defendant's issues addressed in his brief due to his failure to provide the Court a record which supports his allegations.

### ARGUMENT

DEFENDANT FAILS TO SUPPORT HIS BASIS FOR  
DISMISSAL BY SUPPLYING THIS COURT A  
PROPER RECORD

The defendant has set forth three issues in his brief. First is the issue of the police officer's jurisdiction. Second, whether the City's answer to defendant's motion for discovery was timely. Finally, whether Judge Dutson's or Judge Van Wagenen's dismissals of defendant's motions for continuance and dismissal were abuses of discretion. The defendant has failed to supply this Court with a transcript supporting his claims. The defendant bears the burden of providing this Court with an adequate record to preserve his claims. Horton v. Gem State Mut. of Utah, 794 P.2d 847, 849 (Utah App 1990). Defendant has not filed an affidavit of impecuniosity stating an inability to pay for the transcript.

Failure to provide this Court a proper transcript leaves the defendant's claims as "merely unsupported, unilateral allegation[s] which [the Court] cannot resolve." Mark VII Fin.



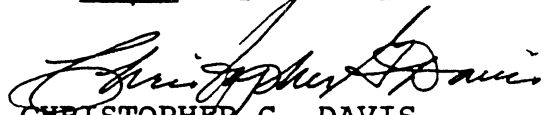
Consultants Co. v. Smedley, 792 P.2d 130, 134 (Utah App. 1990).

Accordingly, under the authority set forth above, this Court should not consider the defendant's challenge to this denial of his motions to continue and dismiss or his conviction.

CONCLUSION

Based upon the foregoing arguments, this Court should affirm the trial courts' denial of defendant's motions for continuance and dismissal and his subsequent conviction.

RESPECTFULLY submitted this 7 day of May, 1993.

  
CHRISTOPHER G. DAVIS  
Roy City Attorney

CERTIFICATE OF MAILING

I hereby certify that a true and accurate copy of the foregoing Brief of Appellee was mailed, postage prepaid, to Brandon Gresham, defendant, at 2072 West 4800 South, Roy, this 7 day of May, 1993.

  
Laurel S. Dalton